

**From:** [Michael Taubenfeld](#)  
**To:** "Mark Kook"  
**Cc:** [Oleg Mestechkin \(OM@lawmlg.com\)](mailto:Oleg.Mestechkin@lawmlg.com); "Wing Chiu"; [wbrown@hanglaw.com](mailto:wbrown@hanglaw.com)  
**Subject:** RE: responses  
**Date:** Thursday, November 03, 2016 7:15:26 PM

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Mark,

I'll review. Do you intend to send me any pay or time records for Aguilar-Cano? I've been asking for these for months. If there are no additional documents, let me know.

Relatedly, as discussed after Monday's deposition, we intend to move for summary judgment on a number of issues:

- 1) Mr. Berezovsky's status as a joint employer under the FLSA and NYLL;
- 2) That Defendants failed to act in subjective good faith with objectively reasonable grounds for believing that their acts or omissions did not violate the FLSA and NYLL and therefore they are liable for liquidated damages. Basically we're moving for summary judgment on Bubble and EMSG Defendants' Eleventh Affirmative Defense (obviously this only applies if we establish FLSA or NYLL violations, which we will have to do at trial);
- 3) 2167, EMSG, and Off-Broadway, and First Ave. are a single enterprise and all liable under the FLSA and NYLL; and
- 4) Defendants violated NYLL 195(1) for failure to provide wage notices to Plaintiffs and 195(3) for failure to provide wage statements.

In the hopes of avoiding unnecessary fees, we discussed on Monday whether Defendants would stipulate to the above. I don't see any basis for opposing any of the above, and I can provide you with authority tomorrow if necessary.

Separately, I'm still working to get a global demand for the TY Defendants' work as discussed on Monday. I should have it tomorrow.

Thanks.

- Michael

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**From:** Mark Kook [mailto:mkook@kooklaw.com]

**Sent:** Thursday, November 03, 2016 5:45 PM

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Michel – here are the Responses.

My client has been out the past few days and will have him verify the Int Resps when he returns.

I will send some docs tomorrow

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